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8 *Attorney for Defendant*

9  
10 IN THE UNITED STATES DISTRICT COURT  
11  
12 FOR THE DISTRICT OF ARIZONA

13 United States of America,

14 Plaintiff,

15 vs.

16 David Allen Harbour,

17 Defendant.

Case No. CR-19-00898-PHX-DLR (DMF)

18 **MOTION TO WITHDRAW AS**  
19 **COUNSEL OR IN THE**  
20 **ALTERNATIVE MOTION TO**  
21 **CONTINUE THE TRIAL FOR A**  
22 **PERIOD OF 90 DAYS**

23 Ashley D. Adams, on behalf of Adams & Associates, PLC, hereby files a Motion to  
24 Withdraw as Counsel, or in the alternative, moves for a continuance of the trial set on March  
25 28, 2022, for a period of 90 days. This Motion is supported by the attached Memorandum  
26 of Points and Authorities.

1 **MEMORANDUM OF POINTS AND AUTHORTIES**

2 **I. Adams & Associates, PLC was retained only on a limited basis in order to assist**  
3 **Mr. Baskin's firm.**

4 Undersigned counsel was contacted by Allan Baskin, Mr. Harbour's former attorney,  
5 in February of 2020, to assist with Motion Writing and Trial Strategy. Adams & Associates  
6 signed an Engagement Letter with Mr. Baskin's firm and Mr. Harbour on or about February  
7 20, 2020. The firm received a retainer of \$15,000.00. (See Engagement Letter dated  
8 February 20, 2020, attached as Exhibit 1.)

9 Between May of 2020 until early December 2021, undersigned had little involvement  
10 in the preparation of the defense. Mr. Baskin consulted with undersigned regarding various  
11 motions that have been filed in the case, and sent counsel drafts to review before filing.  
12 Undersigned sat on approximately five Zoom and/or phone calls with Mr. Baskin, Ms.  
13 Milovic and Mr. Harbour. On one occasion, Jason Silver was also on a phone conference.  
14 Undersigned duties did not include reviewing *any* of the discovery provided by the  
15 government during this limited engagement.

16 In January of 2021, Mr. Baskin inquired whether undersigned would be willing to  
17 assist with the trial, and in particular, witness preparation for the defense forensic accounting  
18 expert, direct examination of such witness, and with cross examination of the government's  
19 forensic accounting witness. The parties also discussed the possibility of undersigned  
20 handling the cross examination of witness R.G.

21 Thereafter, in late January, 2021, undersigned prepared an amended engagement  
22 letter, with Mr. Harbour only, which was not executed by him until March 29, 2021. (See

1 Amended Engagement executed on March 29, 2021, attached as Exhibit 2.) *The engagement*  
2 *provides that Adams & Associates would be acting as co-counsel to Alan Baskin. Id.* The  
3 engagement letter further required that Mr. Harbour was to provide Adams & Associates  
4 with a retainer of \$100,000. *Id.* To date, only \$50,000 of this retainer has been paid. Counsel  
5 entered a Notice of Appearance and Association of Counsel, on or about March 31, 2021.  
6 (See DKT. 230.)

7 Between March 31, 2021, and until the Government's filed its most recent Petition to  
8 Revoke Mr. Harbour's release, undersigned counsel continued to act only as a "second chair  
9 lawyer." Mr. Baskin and his firm were acting as lead counsel, and made all decisions  
10 pertinent to the defense. Meanwhile, Mr. Silver was to handle the tax issues, and this firm  
11 was supposed to handle the expert witnesses, and possibly R.G. Between March 31, 2021,  
12 and mid-December of 2021, undersigned also reviewed drafts of the various Motions *in*  
13 *Limine* that had been drafted by Mr. Milovic of Mr. Baskin's firm, and motions related to  
14 Mr. Harbour's COVID-19 and health issues, including the most recent continuance motion.  
15 Undersigned has attended two meetings with the defense's forensic expert, and has begun  
16 preparation of the expert's direct examination. Finally, undersigned had intended on meeting  
17 with Mr. Harbour regarding R.G's testimony, but Mr. Harbour was not well enough to attend  
18 the meeting. Counsel has not yet prepared the cross examination of R.G.

19 **II. Undersigned has only reviewed a limited amount of discovery.**

20 Importantly, undersigned has only reviewed a limited amount of discovery in the case.  
21 The reason is because Adams & Associate's role was always meant to be limited. As such,  
22 review of all of the government's discovery was not necessary. Counsel's focus was on bank

1 records, various consulting and operating agreements, and the flow of funds between various  
2 entities. Only a few victim and witness statements have been reviewed by undersigned.

3       Discovery in this case is voluminous, and counsel has not *received*, much less  
4 reviewed most of it. Mr. Baskin's firm has provided access to some of its work product.  
5 However, counsel has never received all of documents produced by the government, and thus  
6 still is not aware of the total amount of documents produced. Undersigned certainly does not  
7 have the institutional knowledge of the evidence needed to be ready for trial by March 29,  
8 2022. Undersigned Counsel, who is a sole practitioner with other cases, including upcoming  
9 trials that would cause undersigned, as the "last lawyer standing" of the original three-lawyer  
10 team led by Mr. Baskin, is not only likely to commit malpractice with respect to this case,  
11 but also with respect to many other cases for other clients. Adams & Associates was also  
12 never retained to handle the entire matter, and was only retained to assist Mr. Baskin's firm.

13 **III. Mr. Baskin has withdrawn as counsel, and Mr. Silver has also filed a Motion to**  
14 **Withdraw, which could not have been anticipated by undersigned.**

15       As this Court is aware, Mr. Baskin filed an *Ex Parte* Motion to Withdraw as Counsel  
16 on or about December 20, 2021 (DKT. 285), which was granted by Judge Fine on or about  
17 December 22, 2021. (DKT. 293.) It is undersigned's understanding that Mr. Silver has also  
18 filed a Motion to Withdraw.

19       This firm agreed to handle the revocation proceedings in light of these recent  
20 withdrawals, and will continue to represent Mr. Harbour, if needed, until these proceedings  
21 have been completed. However, counsel cannot possibly be prepared for trial by the date  
22 scheduled, and thus believes that it is in the best interests of Mr. Harbour to file this Motion

1 to Withdraw, and to allow him to find other counsel. Counsel would request that she be  
2 allowed to withdraw after the revocation hearing set for January 18, 2021.

3 It is undersigned understanding that Mr. Harbour has contacted Stephen Dichter, Esq.  
4 to possibly serve as his counsel and Mr. Dichter and undersigned have conversed. He has  
5 stated that he has a firm trial date in San Miguel County, New Mexico, commencing April  
6 15, 2022, and, obviously, cannot try this case on March 29, 2022. He also has a trial in  
7 February (a USPTO Bar proceeding). Assuming that Mr. Dichter can be retained, after the  
8 government reviews his prospective fee agreement and, if necessary, the Court reviews and  
9 approves it,<sup>1</sup> he will obviously need sufficient time to prepare. Mr. Dichter has not been  
10 retained, but he has been in discussions with Mr. Harbour. Mr. Dichter has advised that he  
11 could be prepared to try this case by late-June, 2022, were Adams & Associates to stay on  
12 the case in the capacity for which it originally agreed-as second chair. If this firm withdraws,  
13 Mr. Dichter advises that he could be ready to try it after the summer.

14 **IV. The government has advised that it objects to any continuance.**

15 On or about January 7, 2022, undersigned e-mailed, and called Kevin Rapp, the AUSA  
16 assigned to this case, and inquired whether the government would be opposed to a 90-day  
17 continuance. The government has advised that it will oppose a continuance. As such,  
18 undersigned believes that she has no present choice, other than to withdraw.

19 \_\_\_\_\_  
20 <sup>1</sup> Mr. Dichter is from a small law firm that could not financially endure a demand to divest  
21 itself of the substantial fees it would have to be paid to first chair a fraud, tax, and money-  
22 laundering case on short notice against the government's most seasoned trial lawyer, he  
would have to be a fool to take on the case, no matter how interesting or financially  
rewarding it might be.

1           **V. Mr. Harbour requests a 90-day continuance of the trial in light of recent**  
2           **events.**

3           Assuming that the issue of Mr. Dichter's potential involvement is not simultaneously  
4 resolved, Counsel also requests that this Court continue the trial for a period of 90 days,  
5 which would allow Mr. Harbour to retain new counsel. Obviously, Mr. Dichter cannot agree  
6 to substitute in as counsel at this time because he is unable to certify that he will be ready for  
7 trial by March 29, 2022, pursuant to L.R.C. 83.3(b)(1), due to his other trial in mid-April of  
8 2022. Moreover, it is doubtful that any trial lawyer could be "ready" to try a case of this  
9 complexity from a standing-start by that date, even without two trials in-between.

10           Also, it must be conceded, that, if Mr. Harbour's release is revoked, the time needed  
11 to prepare his defense for a trial of this magnitude will be longer, not shorter. The auditorium  
12 or gymnasium used by CivicCare in Florence (formerly CCA) for attorney-client meetings  
13 is not conducive to the meaningful exchange of privileged information. The drive to CCA is  
14 also *at least* an hour drive, for most attorneys living in the Phoenix areas. The revocation  
15 matter has also substantially distracted counsel from trial preparation. The issues involved  
16 therein are complex, and consuming.

17           While this case is not young, it is also not particularly old. Reviewing the history of  
18 delays while, as has been the tradition here since the enactment of the Speedy Trial Act,  
19 virtually all delays are borne by the Defense, no matter what the actual cause. It is the most  
20 expeditious manner in which to exclude time.

21           Here, as the Court knows, the case was delayed for about 9 months under DKT. 134  
22 dated September 16, 2020, approved by DKT. 136, two days later. Trial was reset to May 18,

1 2021. While the motion cited the usual defense bases for continuances, provocatively, also  
2 interwoven therein was the government's issues. Such involved the lead prosecutor, Mr.  
3 Rapp, who was also the lead-District of Arizona prosecutor in *United States v. Lacey*, 18-cr-  
4 00422 (the "Backpage" case). The Backpage trial was, at that point, supposed to commence  
5 in January 2021, and setting the trial in this case in May was, obviously, of importance to the  
6 government.

7 Next, on November 24, 2020, the government superseded the indictment (DKT. 154)  
8 making the case even more complex. The Backpage trial did not start in January, 2021.  
9 Meanwhile, the May 2021 trial date in this case was sought to be extended in DKT. 220 filed  
10 on March 1, 2021. In granting the motion, DKT 229 dated March 23, 2021, which the  
11 government opposed, the Court noted that the defense would have requested a delay until  
12 September 2021, but requested January 2022 because "government counsel will be serving  
13 as lead prosecutor in a three-month trial beginning on August 23, 2021."

14 The *Backpage* case commenced trial on or about that date with the result known to all  
15 involved in this case. It is notable that, in its opposition, the government did not mention the  
16 delay attributable to the prosecutor's unavailability. So, the government was the beneficiary  
17 of its own unavailability to start the trial in September. In any universe having equanimity,  
18 the government surely owes the defense the four months that Mr. Harbour shouldered for the  
19 United States Attorney's Office.

20 This time around, as the Harbour and Backpage cases continue to circle each other,  
21 the government faces (or, perhaps, due to the appeal just filed in Backpage from the denial  
22 of the motion to dismiss based on double jeopardy (DKT. 1445, dated January 2, 2022), faced

1 another potential period of unavailability. Pursuant to DKR. 1377 (no separate order), the  
2 re-trial for The Backpage case was set to be retried from February 2022 through April 29,  
3 2022. Had there not been an appeal, can it be assumed that Mr. Rapp would have walked out  
4 of his three month long trial into a trial in this case two weeks later? While defense counsel  
5 understands that the briefing schedule ordered by the 9<sup>th</sup> Circuit for the double jeopardy  
6 appeal will likely erase the current trial date, it has not done so yet. As such, the reality is  
7 that, had the new Backpage trial date stood, another “defense delay” of this case would have  
8 ensued, and everyone would be satisfied.

9 A continuance in this matter is in the interests of justice. It could not have been  
10 contemplated that the two other members of the defense team, especially, the lead lawyer,  
11 would have sought to withdraw in late-December, nor that the tax lawyer, Jason Silver, would  
12 also be seeking to withdraw.<sup>2</sup> Mr. Baskin’s withdrawal took with it years of accumulated  
13 knowledge possessed only by the Defendant. In addition, third party records, which have  
14 been promised for months and months, by Green Circle and its counsel, have yet to be  
15 produced. This alone mandates an additional continuance.

16 While undersigned does not believe that her firm has a similar conflict, Adams &  
17 Associates simply does not have the ability to be prepared for trial by the end of March,  
18 2022. The best way to deal with this issue is to vacate the present trial date, reset it to a date  
19 in late-June or early July, 2022, and then order a hearing on determination of counsel. Mr.

20 \_\_\_\_\_  
21 <sup>2</sup> We have been told Mr. Silver is seeking to withdraw and assume that the motion was filed  
22 *ex parte*, as was Mr. Baskin’s. It does not appear on the docket.



1 Dichter will forward his proposed fee agreement to the government before that hearing – fee  
2 agreements are almost never privileged – and the government can react to it. Assuming the  
3 government does not oppose it or suggest it will seek to order the firm to disgorge the fees –  
4 whose source will be disclosed plainly in the proposed agreement – Mr. Dichter can enter an  
5 appearance.

6 Therefore, counsel requests that this Court set this trial sometime after mid-June,  
7 2022, which would allow Mr. Dichter, or a new lawyer additional time to be prepared for  
8 trial. If the case is continued and Mr. Dichter (or someone other than him, if the government  
9 acts in a manner that contraindicates his being able to be engaged) assumes the first-chair  
10 trial position, Adams & Associates is willing to remain involved. However, if none of the  
11 above suggested options comes to pass, Adams & Associates cannot be left as the last lawyer  
12 and be made to assume the first chair position in a trial starting in March 2022, if for no other  
13 reason, the principles set forth in ER 1.1 of Rule 42 of the Rules of the Supreme Court of  
14 Arizona.

15 **VI. Conclusion.**

16 For the reasons set forth above, undersigned requests that this Court allow Adams &  
17 Associates to withdraw as counsel. This firm will agree to continue on through the revocation  
18 proceedings, the final day of hearing for which is scheduled for January 18, 2021, because  
19 that date is imminent, and counsel decided long ago to not leave Mr. Harbour, and Mr.  
20 Baskin's firm in abeyance. Mr. Harbour deserves to be represented by counsel in a  
21 proceeding in which he stands to lose his liberty, and in which the government has relied  
22 completely on unreliable hearsay, and other unsubstantiated evidence, of which counsel has

1 since become familiar with, as a matter of default. The Court should order other relief  
2 consistent with the points raised in this Motion.

3 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of January, 2022.

4 **ADAMS & ASSOCIATES, PLC**

5  
6 By: /s/ Ashley Adams  
Ashley D. Adams  
Attorneys for Defendant

7  
8 **CERTIFICATE OF SERVICE**

9 I hereby certify that on January 11, 2022, I electronically transmitted the attached  
10 document to the Clerk's Office using the CM/ECF system for filing.

11 Kevin M. Rapp  
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16  
17  
18 /s/ Kathy Taylor  
Paralegal to Ashley D. Adams